Appeal No: VA17/5/094

AN BINSE LUACHÁLA
VALUATION TRIBUNAL

AN tACHTANNA LUACHÁLA, 2001 - 2015
VALUATION ACTS, 2001 - 2015

Paul and Susan Hennessy **APPELLANTS**

and

Commissioner of Valuation **RESPONDENT**

In relation to the valuation of

Property No. 2194922, Kennels at 22/1, Garryduff, Shankill, Kilkenny, County Kilkenny.

B E F O R E

Rory Lavelle – MA, FRICS, FSCSI, ACI Arb	**Deputy Chairperson**
Mairead Hughes - Hotelier	**Member**
Dairine Mac Fadden - Solicitor	**Member**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 19TH DAY OF APRIL, 2018

1. THE APPEAL

1.1 By Notice of Appeal received on the 4th day of October, 2017 the Appellants appealed against the determination of the Respondent pursuant to which the net annual value '(the NAV') of the above relevant property ("the Property") was fixed in the sum of €18,580.

1.2 The sole ground of appeal as set out in the Notice of Appeal is that the determination of the valuation of the Property is not a determination that accords with that required to be achieved by section 19 (5) of the Act because :
"1. The valuation of the subject property is excessive and inequitable. The property's value as set by the Commissioner is not in line with its actual rental value."
"2. The vast majority of the subject property is agricultural and hence not rateable. There are only 2 blocks in the entire complex now commercial."

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €2,150.

2. REVALUATION HISTORY

2.1 On the 22nd day of June 2017 a copy of a valuation certificate proposed to be issued under section 24(1) of the Valuation Act 2001 ("the Act") in relation to the Property was sent to the Appellants indicating a valuation of €22,400.

2.2 Being dissatisfied with the valuation proposed, representations were made to the valuation manager in relation to the valuation. Following consideration of those representations, the valuation of the Property was reduced to €18,850.

2.3 A Final Valuation Certificate issued on the 7th day of September, 2017 stating a valuation of €18,850.

2.4 The date by reference to which the value of the property, the subject of this appeal, was determined is the 30th day of October, 2015

3. THE HEARING

3.1 The Appeal proceeded by way of an oral hearing held in the offices of the Valuation Tribunal at Holbrook House, Holles Street, Dublin 2, on the 22nd day of March, 2018, At the hearing the Appellant was represented by Mr David Halpin MSc (Real Estate), BA (Mod) and the Respondent was represented by Mr Terry Devlin BSc, SCSI, RICS of the Valuation Office.

3.2 In accordance with the Rules of the Tribunal, the parties had exchanged their respective reports and précis of evidence prior to the commencement of the hearing and submitted them to the Tribunal. At the oral hearing, each witness, having taken the oath, adopted his précis as his evidence-in-chief in addition to giving oral evidence.

4. FACTS

4.1 From the evidence adduced by the parties, the Tribunal finds the following facts.

4.1.1 Blocks 4 (described by the Appellants as "Breeding Kennel"), 6 (Porch), 9 (described by the Appellants as "Domestic Kennel-former clinic/quarantine largely disused), 10 (described by the Appellants as "Domestic"), 14 (described by the Appellants as "Walker for retired dogs), and 16 (Toilet) are all Relevant Property within the meaning of the Valuation Act 2001 as amended;

4.1.22 Block 15 (described by the Appellants as "Kennels for Young Dogs – pre-training)"), is Relevant Property Not Rateable within the meaning of the Valuation Act 2001 as amended.

5. ISSUES

At the commencement of the hearing, Mr. Devlin on behalf of the Respondent agreed that the blocks numbered 2 and 8 (Breeding Kennels) and the blocks numbered 5 and 17 – 19 (stores) (all as more particularly described at pages 10 - 11 of the Appellants' précis of evidence) were now to be excluded. He said that this reduced the rateable area to 1214.50 m^2 and that the Respondent was seeking a valuation of that area at a rate of €12 per m^2 to give a total NAV of €14,574 reduced to €14,570.

Mr. Halpin for the Appellants accepted that blocks 1, 3, 7 and 11 – 13 were rateable.

The blocks in dispute were blocks 4, 6, 9,10,14,15 and 16. The issue between the parties was whether these blocks qualified for exemption on the basis that they comprised Relevant Property Not Rateable within the meaning of Schedule 4 of the Valuation Act 2001 as amended and in particular whether they were used for the breeding of greyhounds and consequently within the definition of "farm buildings" (paragraph 5 of Schedule 4) or were connected directly with the domestic. The Appellants contented that the disputed blocks were either used for the breeding of greyhounds or in domestic use and not rateable while the Respondent's position was that the disputed blocks were Relevant Property and rateable.

6. RELEVANT STATUTORY PROVISIONS:

6.1 The net annual value of the Property has to be determined in accordance with the provisions of section 48 (1) of the Act which provides as follows:

"The value of a relevant property shall be determined under this Act by estimating the net annual value of the property and the amount so estimated to be the net annual value of the property shall, accordingly, be its value."

6.2 Section 48(3) of the Act as amended by section 27 of the Valuation (Amendment) Act 2015 provides for the factors to be taken into account in calculating the net annual value:

"Subject to Section 50, for the purposes of this Act, "net annual value" means, in relation to a property, the rent for which, one year with another, the property might, in its actual state, be reasonably be expected to let from year to year, on the assumption that the probable annual cost of repairs, insurance and other expenses (if any) that would be necessary to maintain the property in that state, and all rates and other taxes in respect of the property, are borne by the tenant."

6.3 Schedule 4 of the Valuation Act 2001 as amended is headed "Relevant Property Not Rateable and includes at paragraph 5 "Farm Buildings".

6.4 "farm buildings" are defined in section 3 of the Valuation Act 2001 as amended, as including:

> (b) Buildings, parts of buildings, or other structures, used solely for the production of livestock, poultry or eggs or for the breeding of bloodstock or other animals

7. APPELLANTS' CASE

Mr. Halpin on behalf of the Appellants stated by way of background that at the first valuation in 2008, the Property was virtually entirely commercial. He compared the prize money which had been won by the Appellants in 2007, (€675,000) with the prize money won by them in 2007, (€150,000). He said that while he was not contending that the Property should be valued on a turnover basis, the reduction in the prize money indicated that the nature of the business had completely changed in this time with the move away from commercial training to breeding. Many of the blocks were no longer in commercial use. He said that the use of a property was what defined its rateability and that the fact that a property could be used commercially did not make it rateable but that the Respondent was obliged to take the Property as he found it having regard to its current use on the material day in question being

the valuation date. The Property was located on the Appellants own farm and had no commercial value other than as farm buildings and it could not be let on the open market except as such or for kennels. The Property consisted of a greyhound kennel complex constructed in a piece meal fashion over a period of 30 years. All the buildings were constructed cheaply and none were of industrial quality and some were former farm buildings which were converted.

He accepted that blocks 1, 3, 7, and 11 – 13 were rateable, with block 1 in use as a commercial racing kennel and block 3 as a commercial dog walking shed. As regards block 7 (Tea Room), he said that while in the context of a farm this was probably not rateable, he accepted that in the context of the hypothetical tenant, it would be. Blocks 11 – 13 were commercial turn out sheds and while he said sometimes these were not rateable, he accepted that they should be.

As regards the rateability of the disputed blocks, he said that block 4 was used for breeding and was not rateable; that block 6 was a tiny porch which was not used commercially and was not rateable; that block 9 which he described as a domestic kennel was a former clinic/quarantine area which was sometimes used for the Appellants own dogs but largely disused and should not be rateable; that block 10 was a domestic shed built to the rear of blocks 9 and 10 and in domestic use; that block 14 was a walker for retired dogs owned by the Appellants and in respect of which they were making no money, largely disused and not rateable; that block 15 were kennels for young (pre-training dogs) all owned by the Appellants and that these were also not rateable consistent with the established practice on the rateability of the training of bloodstock (horse training), where stables for mares, foals being broken in and horses belonging to occupiers which did not form part of the commercial operation, were all exempted by the Commissioner; that block 16 was a toilet, which was needed on a farm and that while it could be said that this was either domestic or commercial and that it was what he described as a "grey area", his contention was that they it was connected to the farm and not rateable.

He said that the breeding of dogs was not rateable and that this was covered under the statutory definition of farm buildings. He referred to Clause 5, Schedule 4 and the definition at section 3 of the Act and in particular subparagraph (b) which he said stated " buildings, parts of buildings, or other structures, used solely for the production of livestock, poultry or eggs or for the breeding of bloodstock or other animals".

He said that the Property was the only rated racing kennel in the county of Kilkenny that the Appellants were aware of and that all except one trained their own dogs, that is to say that they trained only dogs owned by themselves. He said that this was somewhat significant as the Appellants were entitled to the same treatment for the areas of their property where solely their own dogs were kept and that the only commercial kennel in the entire facility was block 1; that it contained primarily dogs which were owned by a third party, along with some dogs which were owned solely by the Appellants. He said that these dogs made use of a commercial dog walker in block 3 and could also train in blocks 11 to 13 if the weather was bad. He said that there was no other commercial training being engaged; that the Appellants derived no monetary benefit from retired dogs; that young dogs were housed and worked in block 15 and any deemed suitable for commercial training were then placed in block 1 or sold if not deemed suitable.

He said that there were essentially 20 dogs in the training kennels and that the majority of these were owned by a third party; that the Appellants had previously employed 8 people but only Mr Hennessy was engaged in training now and that there was still a loan outstanding on the Property.

He said that boarding kennels were different to training kennels and that while there was the possibility that the Property could be let out as kennels, the hypothetical tenant would not pay for walk out or turn out areas and would not want such a large area. He said that the kennels referred to by the Respondent in his précis were much smaller and more manageable than the Property and that if all the blocks put forward by the Respondent were to be rated, a reduction in the area per m^2 should be made to allow for the much larger area of the Property and proposed a rate of €6 per m^2 and not the €12 per m^2 as contended for by the Respondent.
.
He offered as comparisons 5 properties as follows:

(1) Precious Paws Pet Hotel (PN 2193318) valued at €15 per m^2, of which he said only a small part was actually valued and that there was a riding stables and livery on site none of which was valued;
(2) Rowlands Cattery and Boarding Kennels (PN 2208115) valued at €15 per m^2 with only a small part of it valued;
(3) Rathealy Pet Lodge, Co Kilkenny (PN 5009001), valued at €15 per m^2 which was a modern purpose-built facility and the largest size of a commercial pet boarding business in Kilkenny;
(4) Kilkenny Kennels (PN 5008992) valued at €30 per m^2 and which had the largest NAV of a commercial pet boarding business and was located inside the Kilkenny City ring and ;
(5) 5JWT Transport (PN 2187210) valued at €15 per m^2 which he said was being included for context being one of the nearest commercial properties to the Property and which he said showed that the level per m^2 being applied to the Property had been drawn straight from surrounding industrial properties.

In response to questions from the Tribunal as regards block 9 (former clinic/quarantine), the Appellants' representative said that it was very difficult for the Tribunal to decide and that he did not know if the Tribunal had the best information and that all that he could say was that it was not in commercial use and should not be rated. He did accept that the Appellants' would require to have a quarantine areas should disease ever break out.

Under cross-examination by Mr. Devlin for the Respondent, it was put to him that the Irish Greyhound Board had a record of 37 dogs being trained by the Appellants and not 20 dogs as contended for by the Appellants, to which he responded that this was a record of dogs raced but that it did not give an indication of when they were last raced. He was asked whether there were facilities on site if someone arrived with more dogs to train and said that there were but he said that was not the point, as the situation had to be assessed on the relevant date being the valuation date and not at some point in the future. He also stated that the kennels were essentially full and were not in commercial use. He was asked whether if more dogs were available to train, the Appellants would move from retired dogs and he replied "Yes absolutely". It was put to him that the nub of his case was that the blocks in issue were "farm buildings "and he was asked to refer to the relevant section in the Valuation Act under which he claimed exemption and in particular to indicate where under the definition of "farm buildings" the Appellants could claim exemption. Mr. Halpin said that the Appellants were claiming exemption under paragraph (b) of the definition of "farm buildings", " buildings,

parts of buildings, or other structures, used solely for the production of livestock, poultry or eggs or for the breeding of bloodstock or other animals". It was put to him that the Respondent had already excluded the areas used for breeding and he responded that if the areas were not used for commercial purposes they should not be rated; that the area used for young dogs was for dogs which were as a result of breeding and that retired dogs could be used for breeding, and that consequently both the areas used for the young dogs and the retired dogs should all be regarded as part of the process of breeding and should not be rated. He accepted when it was put to him by Mr. Devlin, that breeding was separate from training. He also accepted when it was put to him that the commercial kennels had been rated at a higher rate per m^2 and that the Respondent had sought to make an allowance of 20% in regard to the Property.

In his summing up the Representative for the Appellants said that there was no evidence that another greyhound operator would take over the Property and he submitted that there was no market above the sum of €5,200 per annum and that the appropriate action was to exclude blocks 4, 6, 9, 10, and 14 -16 but failing that, he submitted that the appropriate rate per m^2 was €6.

8. RESPONDENT'S CASE

8.1 The Respondent's representative said that the Commissioner was relying upon four key rental transactions to inform the estimate of the Net Annual Value. He said that the result of these investigations provided what he described as the Net Effective Rent (NER) in each case and that this collection of NER's provided the basis for deciding what was the appropriate NAV per m2 or Zone A to be applied to the group of properties sharing similar characteristics, including the Property. He said that of the four key rental transactions none were subject to further consideration at representation stage and that none of the key rental transactions were subject to a Valuation Tribunal appeal. His evidence of the key rental transactions was as follows:

1. 1.PN2206911 Westcourt Industrial Estate Callan, which he said was industrial in nature and where the rate per m^2 was €27. He said that while this property was not directly comparable to the Property, the valuation levels applied to the Property had been discounted down to €12 per m^2 to reflect these differences.
2. PN 2189564 Waterford Rd Business Park, New Ross which he said was industrial in nature and where the rate per m^2 was €27. He said that while this property was not directly comparable to the Property, the valuation levels applied to the Property had been discounted down to €12 per m^2 to reflect these differences.
3. PN 2187043 - which he said was industrial in nature and where the NER per m^2 was €22. He said that while this property was not directly comparable to the Property, the valuation levels applied had been discounted down to €12 per m^2 to reflect these differences.
4. PN 2187379 – Rathpatrick, County Kilkenny, which he said was industrial in nature and where the rate per m^2 was €25. He said that while this property was not directly comparable to the Property, the valuation levels applied had been discounted down to €12 per m^2 to reflect these differences.

As evidence of equity and uniformity he said that there were 74 industrial properties valued at the level of €15 per m^2 in rural Kilkenny and that at least 8 of these properties were located in the vicinity of the Property. He said that a total of seven properties made representations at full valuation certificate stage and that the Property was the only one which

was under appeal to the Valuation Tribunal. He give evidence of six key comparisons of kennels as follows:

1. PN5009001 Rathealy, Tullaroan, Co. Kilkenny, which he said was valued at a rate of €15 per m^2.
2. PN 2193318, Ballinclare, Glenmore, Co. Kilkenny, which he said was also valued at the rate of €15 per m^2.
3. PN 2208115, Balleen, Freshford, Co. Kilkenny, which he said was valued at the rate of €15 per m^2.

He give evidence of three key comparisons of industrial property as follows:

1. PN 2187210, which he said was an industrial property in rural Kilkenny valued at €15 per m^2.
2. PN2194967 which he said was an old industrial property in rural Kilkenny valued at €20 per m^2.
3. PN2193328 which was an old industrial unit in Paulstown Kilkenny valued at €20 per m^2.
4. PN211627 another old industrial unit in Paulstown Kilkenny valued at €20 per m^2.
5. PN230379 an industrial unit in Gowran valued at €22 per m^2.
6. PN5006723 an industrial unit in Gowran valued at €18 per m^2.

He said that the Respondent was satisfied that the Property was a relevant property under schedule 3 of the Valuation Act 2001 as amended. He said that his opinion of value was as follows: in respect of kennels with a area of 1214.05 m² a valuation of €12 per square metre with an NAV of €14,574 say €14,570. He requested that a valuation of €14,570 be entered in the valuation list as representing the Net Annual Value for the Property in accordance with section 48 of the Valuation Act 2001 and the requirements of section 19 (5).

In response to cross-examination by Mr. Halpin for the Appellants, it was put to him that the Respondent had adopted a number of different opinions as to what was rateable and he was asked what had changed his mind since he had carried out his inspection. He replied that he was satisfied that blocks 17, 18 and 19 which had now been excluded were connected to the farm. He was asked what had convinced him that block 2 (Breeding Kennel) should also now be excluded but not block 4 which Mr. Halpin said was also a breeding kennel and he responded that having checked his notes from the day of his inspection, he noted that he was told that block 4 was only used for training and that there was not mention in his notes of it being used for breeding. He responded when asked whether there was a market for this type of property that it was not part of his role to market properties. He was asked how old the kennel properties which had been submitted as evidence of key rental transactions were and he replied that while he did not have specifications, they would range in age. He accepted that the Rathealy property was a modern facility; it was put to him that the square footage of that facility was only 279.17 which Mr Halpin said was indicative of the extent of the business that could be attracted, to which Mr Devlin responded that while this was difficult to answer, some people going into this type of business would look for greater or lesser areas.

In his summing up the Respondent's Representative said that the Property was a commercial kennel and that the buildings were all fully capable of occupation; that the disputed blocks were relevant property within the meaning of Schedule 3; that the

Appellants had not proven the disputed blocks were farm buildings; that breeding was not taking place in the disputed blocks and that the Appellants' Representative had not provided any evidence to support the valuation of €6 per m^2 proposed by him but had stated this to be his opinion and that this did not amount to evidence.

9. FINDINGS AND CONCLUSIONS

9.1 On this appeal the Tribunal has to determine the value of the Property so as to achieve, insofar as is reasonably practical, a valuation that is correct and equitable so that the valuation of the Property as determined by the Tribunal is relative to the value of other comparable properties on the valuation list in the rating authority area of Kilkenny County Council

9.2 The Tribunal finds as follows:

9.2.1 Blocks 4 (described by the Appellants as "Breeding Kennel"), 6 (Porch), 9 (described by the Appellants as "Domestic Kennel-former clinic/quarantine largely disused), 10 (described by the Appellants as "Domestic"), 14 (described by the Appellants as "Walker for retired dogs), and 16 (Toilet) do not fall within paragraph 5 (farm buildings) of Schedule 4 (Relevant Property Not Rateable) of the Valuation Act 2001 as amended. It follows therefore that these blocks are Relevant Property within the meaning of Schedule 3 and consequently rateable.

Reasons: The onus of proof was on the Appellants to prove that as contended by them, the disputed blocks were being used either for the breeding of dogs and exempted under the definition of "Farm Buildings" as set out in section 3 of the Act or were directly connected with the domestic and the farm. The Tribunal having regard to the evidence submitted prior to the hearing and to the oral testimony at the hearing finds that the Appellants have not discharged this onus. There was insufficient evidence to satisfy the Tribunal that Blocks 4, 9, and 14 were not in use as part of the commercial racing kennel. The Tribunal noted that the Representative for the Appellants acknowledged the difficulty for the Tribunal and questioned whether the Tribunal had the "best information" to enable it to decide on the issue. Further, in regard to Block 9, the Representative accepted that the Appellants would need a quarantine area should disease ever break out and as regards block 16 that it could be said that this was either domestic or commercial and was a "grey area. Notwithstanding that the Appellants did argue for domestic relief in their written submissions in respect of blocks 6, 10 and 16, there was insufficient evidence put forward either in their submissions or at the hearing to substantiate this and further under cross-examination by the Representative for the Respondent, when asked to refer to the section in the Valuation Act under which exemption was claimed, did not claim domestic relief but relied on sub-paragraph (b) of the definition of "farm buildings" , ……buildings used solely for ……..the breeding of bloodstock or other animals".

9.2.2 Block 15 (described by the Appellants as "Kennels for Young Dogs – pre-training)"), does fall within paragraph 5 (farm buildings) of Schedule 4 (Relevant Property Not Rateable) of the Valuation Act 2001 as amended. It follows therefore that this block is exempted and not rateable.

Reasons: The Appellants' evidence was that Block 15 was used to house young dogs and that any subsequently deemed suitable for commercial training were then placed in Block 1 or sold if not deemed suitable. The Tribunal is satisfied that block 15 should, as contended for by the Appellants, be regarded as being used in conjunction with and as part of the process of

breeding and consequently coming within the definition of "farm buildings" and exempted from rates.

9.2.3 The appropriate rate per m^2 is €10.

Reasons: The Appellants had argued for a rate of €6 per m^2 but had not provided any evidence in support of this proposed valuation. The Respondent had proposed a rate of €12 per m^2 but had accepted in regard to his evidence of key rental transactions that the comparisons submitted by him which ranged from €22 per m^2 to €27 per m^2 were not directly comparable but that the valuation of the Property had been amended to reflect the differences. As regards the evidence of equity and uniformity, of the 9 properties submitted by the Respondent 3 were of kennels of a much smaller area and the remaining 6 were of industrial properties with a range of valuations from €15 to €22 per m^2 which the Respondent said had been discounted down in respect of the Property. Notwithstanding that the Respondent did attempt to make an allowance for the different nature of the Property, the Tribunal finds that a rate of €10 per m^2 is more appropriate having regard to the large area of the Property and its location.

DETERMINATION:
Accordingly, for the above reasons, the Tribunal allows the appeal and decreases the valuation of the Property as stated in the valuation certificate to €10,000.

Kennels – Area 1018.5; Rate per m^2 €10; NAV €10,185 say €10,000.

And the Tribunal so determines.